



Final Report

Governor's Advisory Council on D.W.I.

May 1987

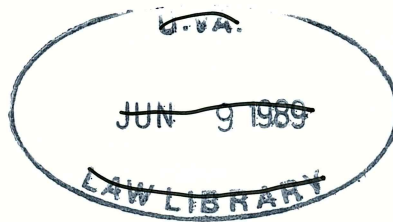
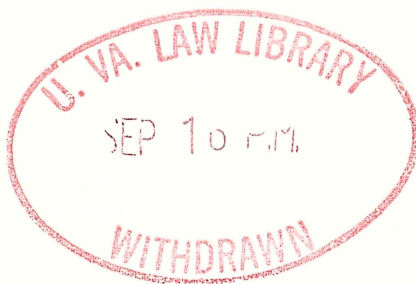
State of Missouri Final Report of the Governor's Advisory Council on D.W.I.

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*Submitted to
Governor John Ashcroft
May 1987
by
Donald J. Loehr
Chairman*



Printed by the Missouri Division of Highway Safety

Missouri Governor's Advisory Council on D.W.I.

Originally Appointed Council Members

Donald J. "Red" Loehr, Chairman
Chief, Ballwin Police Department
Ballwin

Honorable Dennis Smith
State Senator
Springfield

Honorable Harry Wiggins
State Senator
Kansas City

Honorable Jean Mathews
State Representative
Florissant

Honorable Al Nilges
State Representative
Bourbon

Honorable William Webster
Attorney General
Jefferson City

Troy Majors
Chief, Springfield Police
Springfield

Col. Howard Hoffman
Superintendent, MO State Highway Patrol
Jefferson City

Robert D. Aulgur
Legal Counsel, Department of Revenue
Jefferson City

Richard C. Rice
Director, Department of Public Safety
Jefferson City

Nathan B. "Nate" Walker
Director, Division of Highway Safety
Jefferson City

Dale Findlay
Executive Director, MO Safety Council
Jefferson City

Tom Thomas
Sheriff, Platte County
Platte City

Sue Johnson
Past Coordinator, Community
Alcohol Safety Effort
Springfield

Florence Horne
Past President, Heartland M.A.D.D.
Kansas City

Marge Charleville
President, R.I.D.-Missouri
St. Louis

Dr. David Ohlms
Mid-County Physicians
St. Louis

Larry D. Harman
Former Prosecuting Attorney
Clay County
Liberty

Charles Smarr
Supervisor, Liquor Control
Jefferson City

Mary Lueckenotte Strate
MO Beer Wholesalers Association
St. Louis

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MO Department of Elementary and
Secondary Education
Jefferson City

Ron Wilson
Past Director, MO Division
of Alcohol and Drug Abuse
Jefferson City

Dick Moore
Director, MO Department of
Corrections and Human Resources
Jefferson City

Patricia Edwards
Safety Coordinator
Kirkville

Joe Moseley
Prosecuting Attorney, Boone County
Columbia

Honorable Robert Dowd, Jr.
Circuit Judge
St. Louis

Jim Held
Stone Hill Wineries
Hermann

John Diehl, Jr.
Student, Washington University
St. Louis

Jeff Casady
Student
Macon

Additional Council Members

(as appointed by the Chairman)

Ted Bruce
Past Legal Counsel, Attorney General's Office
Jefferson City

Cranston Mitchell
Chairman, Board of Probation and Parole
Jefferson City

Tim Anderson
Legal Counsel,
Attorney General's Office
Jefferson City

Barbara Babb, R.N.
Medical Air Rescue Corps
St. Louis

Everett McBride
President, Heartland M.A.D.D.
Kansas City



Missouri Governor's Advisory Council on DWI

Front row, left to right: Nathan B. Walker, Hon. Jean Mathews, Cranston Mitchell, Barbara Babb, Dale Findlay, Richard C. Rice, Mary Strate, Chairman Donald J. Loehr.

Back row, left to right: Charles Smarr, Tim Anderson, Col. Howard Hoffman, Judge Robert Dowd, Jr., Joe Moseley, Robert Aulgur, Sue Johnson, Tom Thomas.

Not pictured: Hon. Dennis Smith, Hon. Harry Wiggins, Hon. Al Nilges, Hon. William Webster, Troy Majors, Florence Horne, Marge Charleville, Dr. David Ohlms, Larry D. Harman, Dr. Robert Taylor, Ron Wilson, Dick Moore, Patricia Edwards, Jim Held, John Diehl, Jr., Jeff Casady, Ted Bruce, Everett McBride.

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Acknowledgements

The members of the Governor's Advisory Council on DWI wish to thank those who offered many viewpoints at the forums, those who shared their expertise by serving on the various committees and all others who contributed to the success of the Council. We especially want to acknowledge the efforts of staff members from the Missouri Division of Highway Safety, Department of Public Safety, who assisted the Council. Without their dedication and hard work, this Council could not have successfully accomplished its objectives.

The Council would also like to thank the staff of the Statistical Analysis Center, Missouri State Highway Patrol for information provided on the DWI Tracking System and for developing the drinking driver demographic charts and graphs for this report.

For their invaluable assistance in organizing the public forums, the Council wishes to offer special thanks to the following individuals:

Sue Johnson, Community Alcohol Safety Effort (Springfield Forum)

Terry Milam, Police Traffic Services Advisory Council (Lake Ozark Forum)

Ron Stewart, Independence Police Department (Independence Forum)

Marge Charleville, R.I.D.-Missouri (Creve Coeur Forum)

Finally, the Council wishes to recognize and thank the members of the Missouri General Assembly who sponsor and support DWI legislation. Their courage has resulted in legislation beneficial to their constituents and all Missouri citizens.

Background

In December 1985, Governor John Ashcroft formed a statewide Advisory Council on DWI. The Governor charged the Council with developing a program to help reduce drinking and driving in Missouri by evaluating the following components of the DWI system:

- 1) Existing DWI Laws
- 2) Public Awareness
- 3) Education
- 4) Enforcement
- 5) Treatment/Rehabilitation
- 6) Prosecution and Adjudication

Governor Ashcroft named Donald Loehr, Chief of the Ballwin Police Department, as Chairman of his Advisory Council. The appointed members of the Council included representatives from the General Assembly, law enforcement, the judiciary, community alcohol programs, the Safety Council, treatment, the beverage alcohol industry, victims of drunk drivers, students, the Departments of Public Safety, Revenue, Elementary and Secondary Education, Corrections; the Attorney General's Office, and the Division of Alcohol and Drug Abuse.

Between July and September of 1986, four public forums were held at Springfield, Lake Ozark, Independence, and Creve Coeur. A total of 53 witnesses testified on all facets of the DWI problem. The testimony centered on several key areas including: victims' rights; streamlining paperwork for processing offenders; problems with administrative revocation; plea bargaining; mandatory alcohol/drug education; and parental responsibility. Following the forums, the Council met in December to review and assess the testimony in order to develop their recommendations to the Governor.



Donald J. Loehr, Chairman, Missouri Governor's Advisory Council on DWI,
and Governor John C. Ashcroft.

Past Legislation

The last major legislation relating to DWI was Suspension and Revocation, Administrative Procedure (RSMo 302.505) which was enacted in 1984 (S.B. 608 & 681). While there have been some problems, Department of Revenue statistics have shown that the law has been successful overall. In the Missouri Highway Safety Study (September 1986), 86% of the Missouri drivers indicated they had heard of this law. This speaks well for Missouri's public awareness efforts.

In August 1984, legislation was passed (H.B. 1226) to include DWI to the Crime Victim's Compensation fund. Beginning in 1985, each offender is assessed a fine of \$36.00, an increase of \$10.00 over the previous fine. The court retains \$1.00 of each fine for administrative expenses. As of February 1987, fines totalling \$502,134.58 have been collected to aid victims of DWI crimes.

Assessment and Recommendations

From the transcripts of the public forums, the Council was able to identify several areas of major concern. After careful consideration of the facts available, the Council would like to submit the following list of recommendations for the Governor's review and consideration.

Immediate Priority

Require Prompt Legislative Action

“The area where I work in north St. Louis County, 20% of the tickets we write are for no driver’s license—none period. People don’t have them. We are not locking them up. They are still out there driving, you know.”

*Sergeant Gary Hemby
Lake Ozark Public Forum*

Recommendation 1

Hardship driving privileges—under the current law, a multiple offender will be denied driving privileges for five years following a second state DWI conviction, and for a minimum of ten years following the third conviction. As the law now stands, the multiple offender is not eligible for hardship privileges during this time. However, if this same multiple offender gets convicted of driving while revoked, or of obtaining a license by misrepresentation during this period, he or she is eligible to obtain a hardship driving privilege for the revocation that is entered on the basis of that conviction. The changes found in RSMo 302.309(5)(a) and (b) will close this loophole.

Legislative Action

Amend existing legislation as follows:

Section 302.309(5) No person is eligible to receive hardship driving privileges whose license has been suspended or revoked for the following reasons:

- (a) Who has been convicted of any felony in the commission of which a motor vehicle was used or who has been convicted for the second time for violating the provisions of section 577.010, RSMo of obtaining an operator’s or chauffeur’s license by misrepresentation;
- (b) Who has been convicted of driving while license or driving privileges are canceled, suspended or revoked;
- [(b)](c) Who at the time he applies for such hardship driving privilege would not be eligible for a chauffeur’s or operator’s license because of the provisions of subdivisions (1), (2), (4), (5), (6), (7), [and] (8), (9), (10) or (11) of section 302.060.

“Actually, I’m at this meeting to show appreciation for Governor Ashcroft for his laws which will deter DWI offenders, to lend support to other victims of intoxicated drivers, and to show that it is a terrible shame that anyone has to be the victim of a drunken driver; but never should more than one person have to be the victim of the same drunk driver.”

*Janice Kay Waitman
Independence Public Forum*

Recommendation 2

RSMo 302.060(10) provides that a person who is convicted of two state DWI offenses shall be denied driving privileges for five years. The Missouri Court of Appeals interpreted this language to mean that the two convictions must occur within five years of each other. The Missouri Supreme Court subsequently disagreed with this thinking, but the ultimate question has yet to be resolved by case law. The proposed change in RSMo 302.060(10) will resolve the issue.

Legislative Action

Amend existing legislation as follows:

Section 302.060(10) To any person whose application shows that he was, within five years prior to such application, convicted for the second time, regardless of the interim between the convictions, of violating the laws of this state relating to driving while intoxicated or who has been convicted of the crime of vehicular manslaughter pursuant to section 577.005, RSMo.

“John Maulden of the National Transportation Safety Board sums up the opinion of most of us here as well as Independence Truman High School and the entire nation, ‘We have to scare the hell out of these drivers. We have to convince them that they are going to get caught and once caught, they are going to receive a penalty that they won’t want.’”

*Brett Gordan
Independence Public Forum*

Recommendation 3

RSMo 577.039 provides that a valid arrest can be made without the offense taking place in the officer’s presence, provided there was a probable cause to make the arrest. However, an added provision requires that the arrest be made within one and one-half hours of when the offense occurred.

This creates problems in situations where there is a single vehicle accident with no witnesses except the driver, or in accidents where there are no surviving witnesses except the driver to fix the time of the violation. It also creates a problem where the driver requires medical attention and it is impractical for an officer to effectuate an immediate arrest.

The proposed changes in RSMo 577.039 would resolve the problem without infringing on the constitutional rights of the suspected drunk driver.

Legislative Action

Amend existing legislation as follows:

Section 577.039 An arrest without a warrant by a law enforcement officer, including a uniformed member of the state highway patrol, for a violation of section 577.010 or 577.020 is lawful whenever the arresting officer has reasonable grounds to believe that the person to be arrested has violated the section, whether or not the violation occurred in the presence of the arresting officer [provided, however, that any such arrest without warrant must be made within one and one-half hours after such claimed violation occurred].

“I think other civilized countries have done much more to protect themselves against drunk drivers, and I think this is just an example of our Western mentality to think that we can't do anything about people who flaunt the law and kill people.”

*Dixie Brown Sackett
Independence Public Forum*

Recommendation 4

Conviction of involuntary manslaughter should be grounds for permanent revocation of driving privileges.

Legislative Action

Amend existing legislation as follows:

Last sentence of RSMo 302.060(10) (Supp. 1984): The director shall not issue any license hereunder:

- (10) To any person whose application shows that he was, within five years prior to such application, convicted for the second time of violating the laws of the state relating to driving while intoxicated.
- (11) To any person who has been convicted of the crime of involuntary manslaughter pursuant to section 565.024(2), RSMo.

Recommendation 5

Automatic one-year license suspension should be given to first-time alcohol-related traffic offenders under 21 years.

Legislative Action

Propose new legislation.

Comparable legislation proposed this session by Senator Roger Wilson (SB 230), Representative Chris Kelly (HB 81), and Representative Claire McCaskill (HB 172).

Recommendation 6

Eliminate or restrict the option of operating a motor vehicle while consuming alcoholic beverages.

Legislative Action

Propose new legislation.

Comparable legislation proposed this session by Representative Chris Kelly (HB 80).

Recommendation 7

Permit the use of municipal DWI convictions for enhancement purposes when sentencing.

Legislative Action

Propose new legislation.

Comparable legislation proposed this session by Representative Sandra Reeves (HB 204).

“Another problem we have is in the administrative officers hearing process where cases were dismissed. One was dismissed because they couldn’t read the operator’s identification. Now tell me what in the devil’s name that has to do with whether this person is innocent or guilty.”

Captain Ron Stewart

Lake Ozark Public Forum

Recommendation 8

Removal of language RSMo 577.023 which states community service must be performed in “at least 10 days” to allow judges more flexibility in sentencing.

Legislative Action

Propose new legislation.

Comparable legislation proposed this session by Representative Jean Mathews (HB 321).

Recommendation 9

Amend administrative revocation law to reduce .13 to .10.

Recommendation 10

Eliminate appeal to Trial De Novo.

Recommendation 11

Impose stiffer penalties for those selling or furnishing alcoholic beverages to minors.

Recommendation 12

Increase minimum penalty for first offender DWI from Class B misdemeanor to Class A Misdemeanor.

Second Priority

Further Review and Evaluation Needed

“... you know, frankly, this is not an issue that can be dealt with solely in the halls of the legislature in Jefferson City or in the courtrooms of the various municipalities and other areas in the state. It has to be dealt with in the living rooms, the dens and the kitchens of our people. That is where the real battle has to be won.”

*Senator Dennis Smith
Springfield Public Forum*

“When court was finished, he said, ‘My God, 80 percent of the cases you had this morning involved alcohol.’ And I said, ‘And those were the driving cases, the minor possessions. Well, the other two were assaults and by the time we get them tried, I’m sure we’ll find there is alcohol involved there too.’”

*Judge John Moon
Creve Coeur Public Forum*

Recommendation 1

Creation of standardized DWI arrest forms for law enforcement statewide.

Action

Police Traffic Services (PTS) Subcommittee on Forms is currently working on this issue.

Recommendation 2

A statewide system of support and possible funding to assist communities in developing and implementing comprehensive alcohol safety projects.

Recommendation 3

Vehicle impoundment for persons driving with a revoked license or of repeat DWI offenders.

Recommendation 4

Mandatory evaluation of all first offenders and a rehabilitation program (based on the evaluation) for repeat offenders. All programs actively providing this service to the courts should be certified by the State Department of Health.

Recommendation 5

Establish a “sentencing matrix” for alcohol-related driving offenses to develop more consistency in sentencing.

Recommendation 6

Consider “articulable suspicion” by law enforcement officer as cause for drawing blood in all serious injury and fatal accidents.

Third Priority

Repeatedly Appeared as a Concern

“What I’m asking for is strict, strict laws that will punish parents and make them responsible. The community itself cannot be responsible. What we have is 300 kids at a party; half of them intoxicated. If we tell them to leave because their neighbors are complaining, we have 150 intoxicated drivers.”

*Sergeant Frank Rogers
Creve Coeur Public Forum*

“I think the first thing that needs to be done is to have the parents be aware and make them believe that there is a problem, and then maybe the students can be helped.”

*Ginger Howard, Student
Springfield Public Forum*

Recommendation 1

A person arrested for DWI should be prosecuted for DWI and not a lesser charge; no plea bargaining for DWI.

Recommendation 2

Same point assessment against license should be given when a DWI is reduced to a BAC if the offender tests .10 % or higher.

Recommendation 3

Suspended Imposition of Sentence (S.I.S.) should not apply to any alcohol-related traffic offense.

Recommendation 4

Implement comprehensive alcohol countermeasure programs in communities with traffic impact data that demonstrates a need.

Recommendation 5

Earmark alcohol taxes to aid in DWI prevention, intervention, treatment and education.

Recommendation 6

Increase driver license reinstatement fees to produce revenue for DWI countermeasures.

Recommendation 7

Educate and encourage alcohol servers and dispensers regarding the need to be trained in server intervention and liability.

Recommendation 8

Parental Responsibility—make parents more accountable for actions of their minor children (i.e., fines and/or incarceration, mandatory counseling/education).

Recommendation 9

Need for local community network to assist DWI victims.

Recommendation 10

Encourage prosecutors and probation/parole officers to elicit input from DWI victims prior to sentencing.

Further Developments in DWI Problem Analysis

Missouri DWI Case Tracking

Over the past year and a half the Missouri Statistical Analysis Center, working with the Department of Revenue and the Missouri Division of Highway Safety, conducted a Driving While Intoxicated Case Tracking Study in the state of Missouri. A total of 870 DWI arrest cases were selected for this study from 38 law enforcement agencies in 12 counties in the state of Missouri. In this study, these sampled cases were tracked through the Missouri criminal justice and administrative regulatory systems. The data that has been captured can provide a rich source of information which may be used to answer a variety of questions associated with Missouri's public sector response to the drinking driver problem. The survey is expected to be published in the summer of 1987.

The following set of research questions was formulated as addressed in the first level of analysis:

1. What are the demographic and driver history characteristics of persons being arrested for Driving While Intoxicated (DWI) in the State of Missouri?
2. What are the law enforcement practices, techniques, and patterns associated with DWI traffic arrests being made in the state of Missouri?
3. How are DWI arrest cases being disposed of as they are processed through the Missouri criminal justice system and what types of negative sanctions and/or rehabilitative services are being employed to correct deviant driving while intoxicated behavior?
4. How are the .13 Blood Alcohol Content (BAC) administrative actions being processed in relation to DWI arrest cases in the state of Missouri?
5. How are the BAC test refusal administrative actions being processed in relation to DWI arrest cases in the state of Missouri?
6. How are the point assessment administrative actions being processed in relation to DWI related arrest convictions in the state of Missouri?

Once the first level of analysis has been completed and the findings published, additional interpretive analysis will be made using the data captured in this study. The specific research questions that will be addressed, to a large degree, will be based on the concerns and issues raised by Missouri officials as a result of their review of the findings derived from the first level of analysis. In addition, attempts will be made to address the following research questions during the subsequent levels of the analysis:

1. Do the demographic characteristics of persons being arrested for DWI in Missouri correlate with those persons whose drinking involvement was a contributing factor in Missouri's traffic accident activity?
2. How long does it take to process DWI arrest cases through the various levels of the Missouri criminal justice and administrative regulatory systems?
3. Are there major differences in criminal justice case processing flows related to urban/rural regions of the state?
4. Are there major differences in criminal justice case processing flows related to demographic characteristics of the persons being arrested for DWI?

Appendix

Subcommittees for Public Forums

Springfield

Sue Johnson (Chair)
Troy Majors
Dennis Smith
Dale Findlay
Larry Harman

St. Louis

Jean Mathews (Chair)
Donald Loehr
Marge Charleville
Robert Dowd
Barbara Babb
Al Nilges
Mary Strate
David Ohlms
John Diehl

Independence

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Patricia Edwards
Nathan Walker
Jeff Casady
Harry Wiggins

Lake Ozark

Richard Rice (Chair)
Joe Moseley
Howard Hoffman
Cranston Mitchell
Robert Taylor
Charles Smarr
Jim Held

Advisory Council Staff

Vicky Williams
Project Director

Dan Needham
Enforcement/Adjudication

Kathy Shikles
Secretary

Richard Echols
Treatment/Rehabilitation

Amy Stewart
Public Information and Education

Joyce Marshall
Legislation

Bill Whitfield
Photography

Additional Assistance

Kim Stephens
Transcriptionist

Witnesses

Springfield Public Forum July 8, 1986

| | |
|---------------------------------------|---|
| Thomas Mountjoy | Prosecuting Attorney of Greene County |
| Honorable David P. Anderson | Circuit Judge |
| Stan Spadoni | Chief, Rolla Police Department |
| Raymond Hargrave | Lieutenant, Springfield Police |
| Paula Tindell | Victim Witness Advocate for Greene County Prosecuting Attorney's Office |
| Tom Trtan | Public Service Director, KOLR-TV |
| Len Krzycki | Executive Director, Ozarks National Council on Alcoholism |
| Jan Strange | Counselor, Parkview High School |
| Christine Squibb | Regional Coordinator for Missouri Institute for Prevention Services |
| Ginger Howard | Clerk Typist, C.A.S.E. Program |
| Dr. Fred Maxwell | Director, Weekend Intervention Program |
| C. Les Reynolds | Executive Director, Safety Council of the Ozarks |
| Bob Watson | Victim, Compassionate Friends |
| Jeanetta Calvert | Victim |

Lake Ozark Public Forum July 23, 1986

| | |
|-----------------------------|---------------------------------------|
| Sgt. Ed Moses | Missouri State Highway Patrol |
| Robert Cutt | Traffic Officer, Hazelwood Police |
| Capt. Ron Stewart | Independence Police |
| Sgt. Gary Hemby | Normandy Police |
| Sgt. Frank Rogers | Ballwin Police |
| Sgt. Randy Roddy | Cape Girardeau Police |
| Jim Moore | VSS Security & Administration |
| Jerry Wilmering | Maryland Heights Police |
| Lt. John Prince | Chief Deputy, Henry County Sheriff |
| Robert Wieland | Traffic Safety Officer, Arnold Police |

Independence Public Forum September 3, 1986

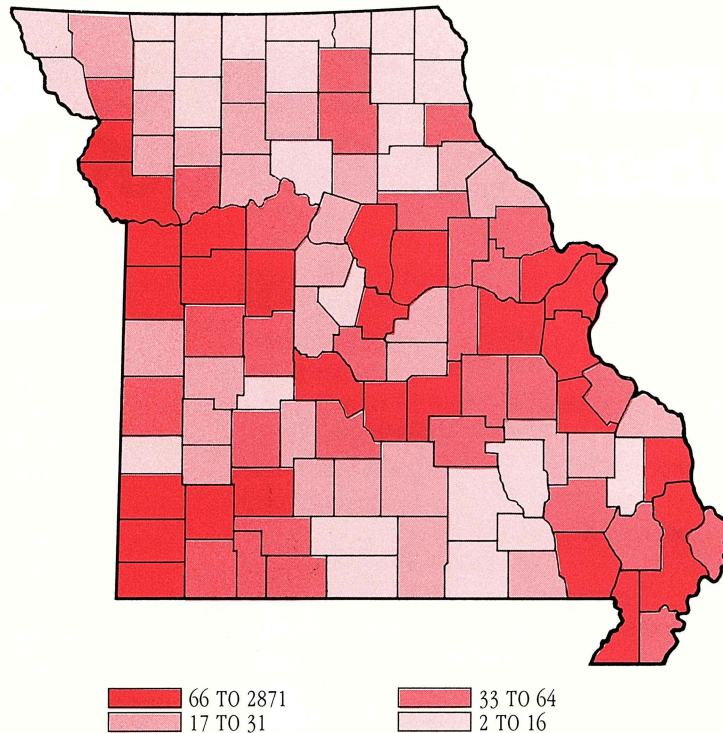
Jim Murray Victim, Jasper County M.A.D.D.
Dixie Brown Sackett Victim
Janice Kay Waitman Victim
Charles Allen Canfield Student
Jan Coats Victim, Heartland M.A.D.D.
Thomas Denton Demark Student and Victim
Ben A. Gallup Victim
Brett Gordon Student
Deanna Kessler Victim, Heartland M.A.D.D.
Marge Knox Victim, Heartland M.A.D.D.
Vic Peters Attorney and Past Prosecutor
James Eads Concerned Citizen
Sherry Brewer Victim
Roberta Murphy Victim, Heartland, M.A.D.D.
Peggy Whittle Victim, Heartland M.A.D.D.
Larry Davis Road Patrol, Platte County Sheriff
John Cogswell Concerned Citizen

Creve Coeur Public Forum September 18, 1986

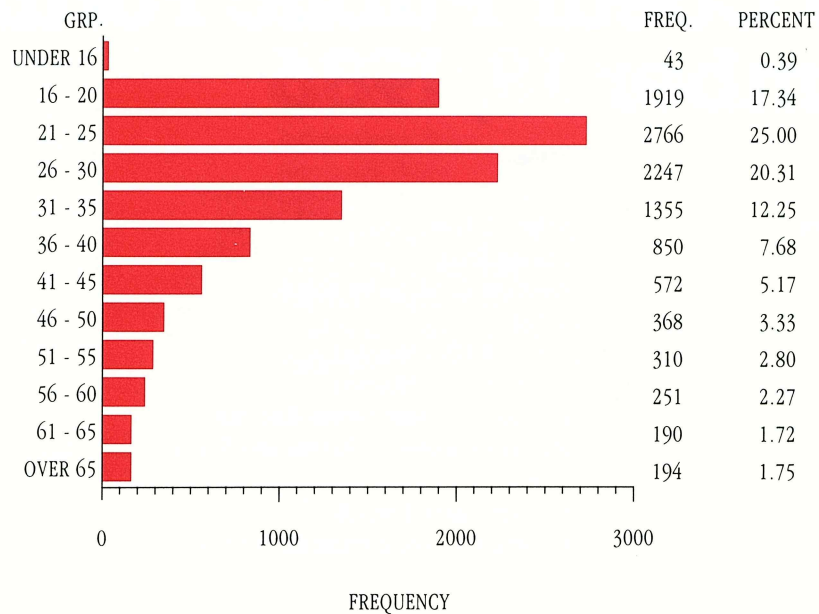
Jim Baker St. Louis County Prosecuting Attorney
Honorable Tony Eberwein Judge, St. Louis County 35th Circuit
Sgt. Frank Rogers Ballwin Police
Honorable John Moon Associate Circuit Judge, Kahoka
Bill Taylor Victim
Carol Lee Mangagna Victim, R.I.D. - Missouri
Thelma Bridgewater Victim, R.I.D. - Missouri
Pamela Nickels Counselor, Webster Groves High School
John O. Clark Missouri Congress of Parents and Teachers Association
Sandra Tyrey Victim
Ed Barni St. Louis Safety Council
Nell Bishop Community Commitment for Survival

MISSOURI 1986 DRINKING DRIVER-INVOLVED ACCIDENTS

BY COUNTY

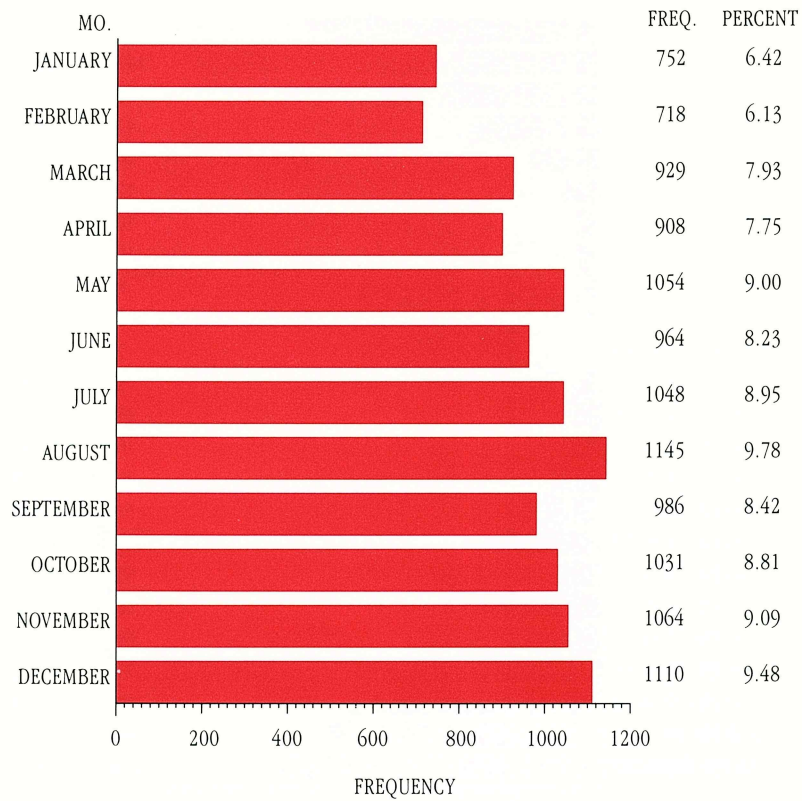


BY AGE OF DRIVER

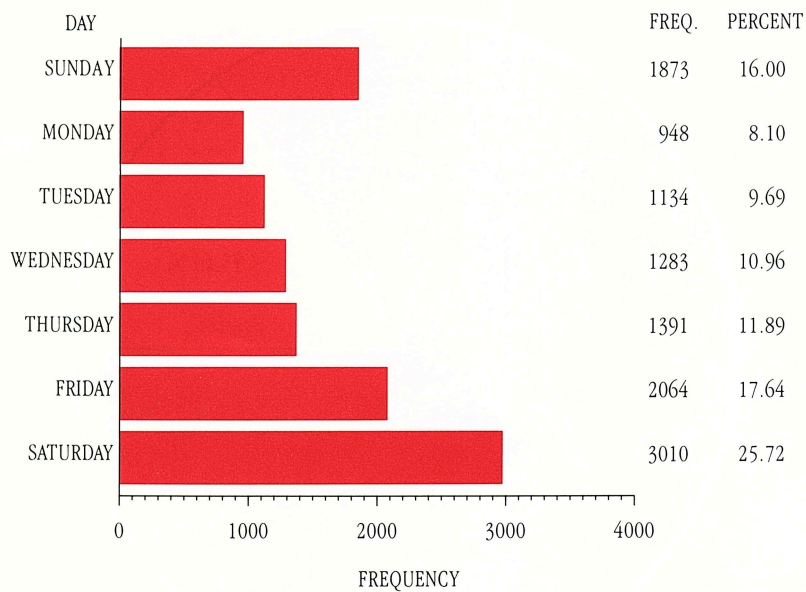


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BY MONTH OF YEAR



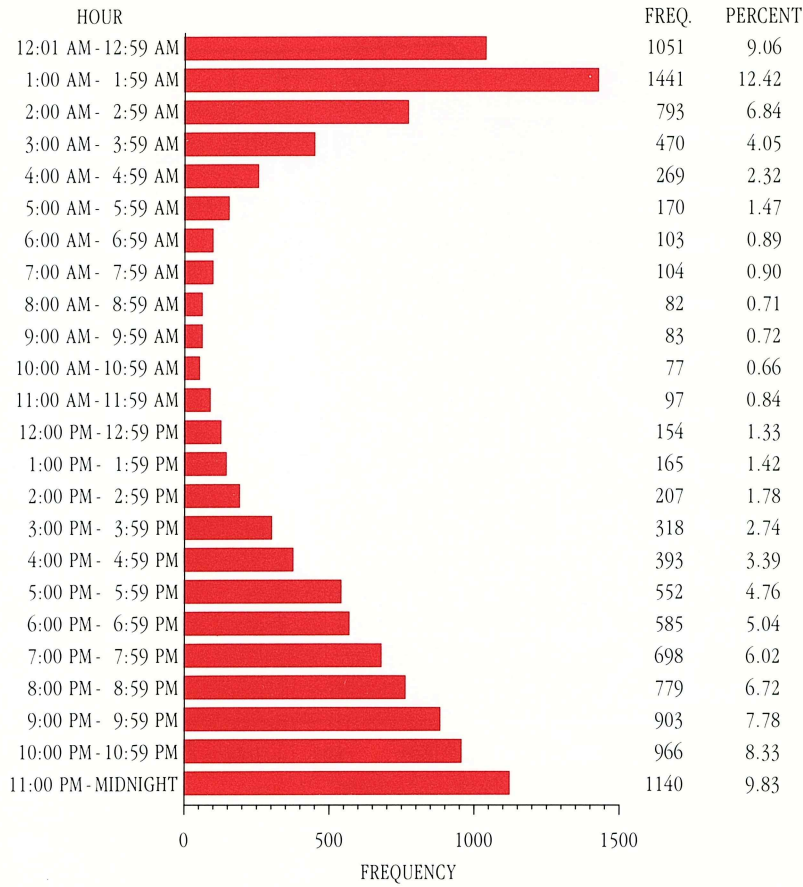
BY DAY OF WEEK



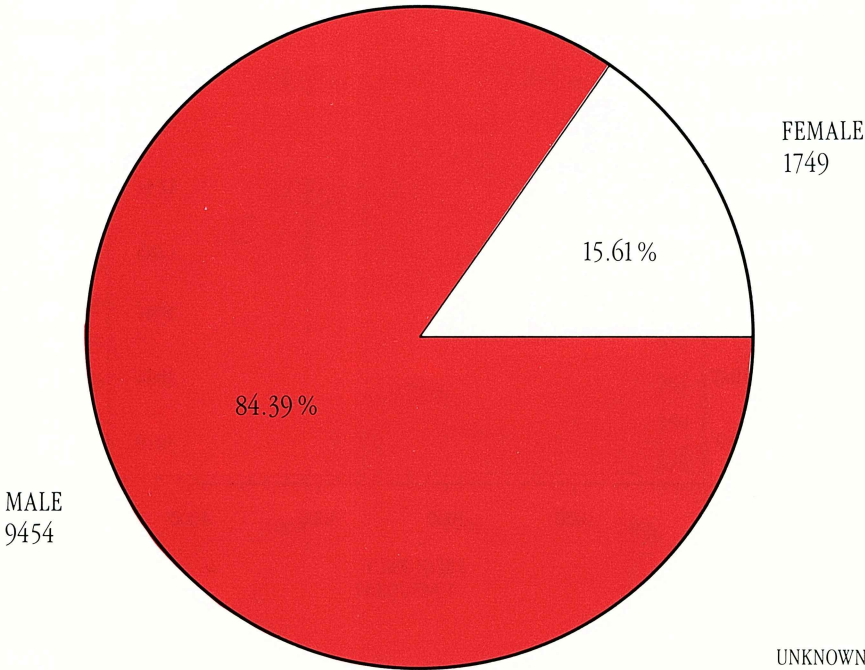
UNKNOWN DATA NOT INCLUDED

MISSOURI 1986 DRINKING DRIVER-INVOLVED ACCIDENTS

BY HOUR OF DAY



BY SEX OF DRIVER



UNKNOWN DATA NOT INCLUDED